



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Application of	)	
Per George Chester Cox, <b>Pro-se</b>	)	
Application No. 10/765,544	)	PETITION TO WITHDRAW
Filed: January 27, 2004	)	HOLDING OF ABANDONMENT
Title: SYSTEM AND METHOD OF	)	37 C.F.R. 1.181(f)
CUSTOMER VIDEO AUTHENTICATION	)	
TO PREVENT IDENTITY THEFT	)	

**RELIEF SOUGHT**

Now comes pro-se petitioner in forma pauperis who respectfully submits his request to withdraw the holding of abandonment of the above identified application. Relief is also sought to restart the response period to allow petitioner to perfect his claims. And finally, relief is sought to correct the file.

**BACKGROUND**

- By letter dated January 27, 2004 marks the critical filing date of the application in the Patent and Trademark Office, hereafter "The Office".
- By letter dated April 8, 2008, the first Office Action of non-final rejection was received at P.O. Box 86, Bedford Hills, New York 10507, hereafter "The Bedford address".
- By letter dated October 6, 2008, my timely response to first OA with new address and stable telephone number under signature shown as 40 Ann Street, New York, New York, 10038, hereafter "The 40 Ann address".
- By e-docket dated October 30, 2008, final rejection sent to "The Bedford Address".
- By e-docket dated November 12, 2008, final rejection RTN MAIL as undelivered from "The Bedford Address".
- By envelope dated on or about January 5, 2009, "The Office" re-sends the October 6, 2008 rejection notice now to "The 40 Ann address".

- By envelope received January 7, 2009, petitioner receives final rejection notice at “The 40 Ann address”. This marked when petitioner was FIRST placed on notice of final rejection.
- By e-docket dated May 8, 2009, “The Office” holds application as abandoned.
- By e-docket dated May 11, 2009, “The Office” mailed out notice of abandonment to “The Bedford address”
- By e-docket dated June 2, 2009, notice of abandonment RTN MAIL as undelivered from “The Bedford address”
- By letter dated July 5, 2009, petitioner mails in amended claims 14 – 33 reply to final rejection.
- By letter dated June 7, 2010: Follow up status letter to avoid abandonment demonstrating a bona fide attempt to advance the application.
- May 17, 2011: Applicant first learns of abandonment from SCORE/SBA representative.

## **DISCUSSION**

### **POINT ONE: WAS NOTICE SUFFICIENT IN THE FIRST MAILING?**

What constitutes sufficiency of notice concerning The Due Process clause was reached in Jones v Flower, 547 US 220 at 225 – 227 (S. Ct 2006) where the Court addressed whether due process entails further responsibility when the Government becomes aware prior to the taking [of property] that it’s attempt at notice has failed. The Jones Court held that the standard of sufficiency of notice when mail is returned unclaimed obliges the Government to take additional

reasonable steps to attempt to provide notice to the property owner before selling his property, if it is practicable to do so. (Jones at 227)

The precedence is also seen in Robinson v. Hanrahan, 409 U.S. at 40, 93 S.Ct. 30, 31-32, 34 L.Ed.2d 47 (1972) where the Court required the Government to consider unique information about an intended recipient regardless of whether a statutory scheme is reasonably calculated to provide notice in the ordinary case within the framework of Due Process.

In the case at bar, the first mailing had been sent to The Bedford address irrespective of The 40 Ann address and stable telephone number. This unique information was under signature on petitioner's October 6, 2008 most current correspondence of record. The October 30, 2008 correspondence was logged as returned mail on November 12, 2008 as undelivered. As such the first notice was inadequate. Petitioner concedes that the Technology Center (TC) technical support staff reconsidered the unique information within the Due Process standards spelled out in Jones as evidenced by resending the October 30, 2008 second mailing to The 40 Ann address.

This second mailing is described as with the same October 30, 2008 mail out date, but now containing a peel over address label with the handwritten words of the 40 Ann address. (Attached hereto as exhibit "1") The envelope was postmarked January 5, 2009 with a January 7, 2009 metered date stamp and time of 4:06pm received at the 40 Ann address. (Attached hereto as exhibit "2") See also Armendariz-Mata v. United States Dept. of Justice, 82 F.3d 679, 683 (5th Cir.1996) (applying Mullane v Central Bank & Trust Co., 339 US 306 S. Ct (1950)) to returned mail without requiring "exceptional circumstances" to locate recipient); Torres v. \$36,256.80 U.S. Currency, 25 F.3d 1154, 1161 (2d Cir.1994) (same). Therefore, January 7, 2009 marks the

first time petitioner was placed on notice. And as such January 7, 2009 marks the date of sufficient notice consistent with The Jones Court and the Constitutionally sound Due Process requisite.

#### POINT TWO: RESTART THE RESPONSE PERIOD

Where for any reason it becomes necessary to re-mail any action ( MPEP § 707.13), the action should be correspondingly redated, as it is the remailing date that establishes the beginning of the period for reply. \*\*For Image File Wrapper (IFW) processing, see IFW Manual.

#### **707.13 Returned Office Action [R-6]**

Office actions are sometimes returned to the Office because the United States Postal Service has not been able to deliver them. Upon receipt of the returned Office action, the Technology Center (TC) technical support staff will check the application file record to ensure that the Office action was mailed to the correct correspondence address. If the Office action was not mailed to the correct correspondence address, it should be stamped "remailed" with the [new] remailing date and mailed to the correct correspondence address. **The period running against the application begins with the date of remailing.** If the Office action was mailed to the correct correspondence address and it was addressed to an attorney or agent, a letter \*\*>along with a copy of the Office action may be sent to the first named inventor or assignee (if available)< informing him or her of the returned action. \*\*>The time period for reply to the Office action will be **restarted to run from the mailing date** of the letter informing applicant of the returned action<.

If the Office is not finally successful in delivering the letter, it is placed, with the envelope, in the file wrapper. For an Image File Wrapper (IFW), a copy of the letter and a copy of the envelope should be added to the IFW (see IFW Manual). If the period dating from the remailing elapses with no communication from applicant, the application is abandoned.

Assuming arguendo, the office neglected to redate the Office Action as spelled out in rule 707.13 The evidence of which is found in the silence of the IFW where all unsuccessful letters end. The applicant communicated within the anniversary date on July 5, 2009 to preserve his critical filing date. The July 5, 2009 filing remains a dead question mark and has never been analyzed.

Here, petitioner had less than thirty days to respond to the 3 month shortened statutory period. 35 U.S.C. 133 does not permit a response period to be less than thirty days from the date the office action is given or mailed to the applicant. Here the old mailing date of October 30, 2008 three month anniversary would have been January 31, 2009. As stated, petitioner received first notice on January 7, 2009. This is less than thirty days.

Armed with a January 7, 2009 envelope, petitioner marked his calendar's six month anniversary so as not to be late. As such he then made a bona-fide attempt to advance his application and he filed correspondence to final rejection on July 5, 2009 on Certified Mail receipt No. 7007 0710 0001 0283 5250 in accordance with 37 CFR 1.8 or 1.10 (Attached hereto as exhibit "3")

The Office's failure to redate the remailed office action as directed in 707.13 resulted in over two-thirds (2/3) of the shortened statutory time period elapsed. As such, the petitioner was prejudiced twice. The first mailing of October 30, 2008 prejudiced the petitioner by seventy (70) days of the maximum statutory six months time period. Then, petitioner was prejudiced a second time by not receiving notice of abandonment. In the second instance, The Office knew or should have known that The Bedford address was invalid because The 40 Ann address of record was successful. Success of the 40 Ann address is evidenced in the absence of return mail typically logged in the image file wrapper (IFW) where all unsuccessful mail ends up.

The totalities of circumstances lead to a pre-mature holding of abandonment on May 8, 2009 instead of July 7, 2009 and as such should be withdrawn.

The pre-mature holding of abandonment on May 8, 2008 also prejudiced petitioner's ability to secure a pro-bono practitioner. All of whom will not touch the application at the current stage to aid him in this administrative hurdle that may lead to perfecting his claims.

Therefore, the mailing date should be reset to a date that the Director establishes will bring the application up to speed and allow it to be put into its complete and proper form. This may lead to withdrawal of holding of abandonment and thereby grant petitioner time to perfect his claims and application once he engages a pro-bono practitioner.

### **TIMELINESS OF THIS PETITION**

Section 1.181 provides generically for petitions to the Commissioner of Patents and Trademarks concerning patent-related matters. Section 1.181(f) is amended to provide that any petition under 37 CFR part 1 "not filed within two months of the mailing date of the action **or notice** from which relief is requested" **may** be dismissed as untimely (except as otherwise provided).

The Office has long considered the two-month period in 1.181(f) to be the benchmark for determining the timeliness of petitions. See Changes to Patent Practice and Procedure, 62 FR at 53161, 1203 Off. Gaz. Pat. Office at 88 (the Office considers the two-month period in 1.181(f) to be the appropriate period by which the timeliness of a petition should be determined).

#### **Diligence in Filing Petitions to Revive and Petitions to Withdraw the Holding of Abandonment**

Once an application becomes inadvertently abandoned, it is incumbent on applicant to act with diligence in providing the response necessary to continue prosecution. Petitions to revive or to withdraw the holding of abandonment must be filed promptly after applicant is notified **or otherwise becomes aware** of the abandonment. Unless and until the Commissioner accepts applicant's response as sufficient and

complete to revive the application or to withdraw the holding of abandonment, the application remains abandoned and the burden continues to rest with applicant to exercise diligence. [1124 OG 23]

May 17, 2011 marks the date that applicant otherwise first becomes aware of the abandonment. This case may warrant “extraordinary circumstances”. Here “the mailing date of the action or notice from which relief is requested” is of issue. The first mailing date was October 30, 2008 and failed the Due Process standard. It could not have been of issue due petitioner was unaware. The second mailing date of January 7, 2009 passed the Due Process standard, but was not redated due to office neglect. The proffered exhibit January 7, 2009 envelope leads to the July 5, 2009 response. Again, it could not have been of issue due petitioner was not placed on notice of any deficiencies. With no reply from the office and still unenlightened of any deficiencies, the petitioner files a follow-up status letter on June 7, 2010. In making your determination, the technology support staff is asked to bear in mind that petitioner’s sole experience with The Office marked four (4) years and two (2) months wait time between his critical filing date of January 27, 2004 and his first and only office action of April 8, 2008. Consequently, he waited as he always did.

With a new year in tow after his status letter, and all his monies sunk in his invention, petitioner, a United States Air Force honorably discharged veteran (Attached hereto as exhibit “4”) scheduled a consultation with SCORE/SBA on or about May 2, 2011 to learn more. (Attached hereto as exhibit “5”) On May 17, 2011, petitioner learns for the first time from retired practitioner, Roland Plottel of SCORE/SBA, that his application had been held abandoned by The Office. SCORE instructed petitioner as to how to use the PAIR system and investor resource. The extraordinary situation of this case given when petitioner was first placed on notice **or otherwise became aware** as spelled out in 37 CFR 1.181(f) for which relief is requested for

withdrawal of the holding of abandonment commenced May 17, 2011. In other words notice in this case was not from the mail system, but from the SCORE/SBA office. That being the case is what prompted this filing. And as such is within the two month period of 1.181(f).

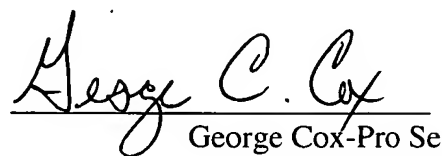
**CORRECT THE RECORD**

Correction of the record is requested to reflect the re-mailing date on or about January 7, 2009.

In conclusion petitioner prays that the Commissioner accepts applicant's facts, exhibits and circumstances as sufficient and complete to withdraw the holding of abandonment. And that the Technology Support Staff restart the response period based on the facts, the notice, and the evidence submitted and apply the spirit of the language "may" of 181(f) with the most liberal interpretation available for pro se litigants. This is especially appreciated given the impending shift away from the lesser "first-to-invent" threshold to the greater "first-to-file" as promulgated by Congress. If granted, time is also requested to secure a pro-bono practitioner to assist him in getting his application in complete and proper order comparable to what the office is accustomed.

Respectfully Submitted,

Date: July 15, 2011



George Cox-Pro Se  
in forma pauperis  
1887 Amsterdam Avenue, Apt #2B  
New York, New York 10032 – 8207  
T – 336.988.3544  
T – 212.464.7752  
[Gccox59@hotmail.com](mailto:Gccox59@hotmail.com)

I hereby certify that this correspondence is being deposited on July 15, 2011 with the U.S. Postal Service as certified mail in an envelope addressed to: Office of Petitions, Mail Stop: Petition Commissioner for Patents, P.O. Box 1450, Alexandria, Va 22313-1450

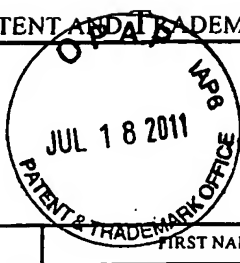
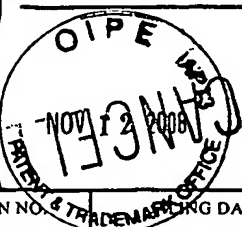




UNITED STATES PATENT AND TRADEMARK OFFICE

IFW

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov



APPLICATION NO.	FILED DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/765,544	01/27/2004	George Chester Cox		2318



George Chester Cox  
40 ANN Street  
New York, NY 10038

EXAMINER	
MEINECKE DIAZ, SUSANNA M	
ART UNIT	PAPER NUMBER
3692	
MAIL DATE	DELIVERY MODE
10/30/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

I have compared this document to the original and it is a true and exact copy. Noted: The address is a peel off sticker applied over another address.

Maria I. Dicaiano 6/15/11

MARIA I DICAIRANO  
Notary Public, State of New York  
No. 4848135  
Qualified in Westchester County  
Commission Expires March 24, 2014



MARIA I DICAIRANO  
Notary Public, State of New York  
No. 4848135  
Qualified in Westchester County  
Commission Expires March 24, 2014

I have examined this document and  
compared it to the original. It is a  
true and exact copy.

Manass Delavans 6/15/11

Organization 3600 Bldg./Room knf  
UNITED STATES PATENT AND TRADEMARK OFFICE  
P.O. Box 1450  
Alexandria, VA 22313-1450  
If Undeliverable Return In Ten Days

Official Business  
Penalty For Private Use, \$300

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2009 JAN -7 P 4: 05

Hasler

016H26516415  
\$00.590  
01/05/2009  
Mailed From 22314  
US POSTAGE

To

10765344 01/11/2009 10/25/2008

Mr. George Chestnut Cox  
400 Ann Street  
New York, NY 10038

1003832440 C003

Exhibit 2



JAMES A. FARLEY MAIN OFFICE  
NEW YORK, New York  
101999004  
3558250028-0087  
07/05/2009 (180)027-5877 04:58:53 PM

===== Sales Receipt =====  
Product                      Sale Unit                      Final  
Description                      Qty   Price                      Price

ALEXANDRIA VA 22313                      \$0.61  
Zone-3 First-Class  
Letter  
1.80 oz.  
Certified                      \$2.80  
Label #:                      70070710000102835250  
=====

Issue PVI:                      \$3.41  
=====

Total:                      \$3.41  
=====

Paid by:  
Cash                      \$5.45  
Change Due:                      -\$2.04  
  
Order stamps at USPS.com/shop or  
call 1-800-Stamp24. Go to  
USPS.com/clicknship to print  
shipping labels with postage. For  
other information call  
1-800-ASK-USPS.

Bill#:1001300802490  
Clerk:05

All sales final on stamps and postage  
Refunds for guaranteed services only  
Thank you for your business

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\*\*\*\*\*  
HELP US SERVE YOU BETTER

Go to: <http://gx.gallup.com/pos>

TELL US ABOUT YOUR RECENT  
POSTAL EXPERIENCE

YOUR OPINION COUNTS

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Customer Copy

7007 0710 0001 0283 5250

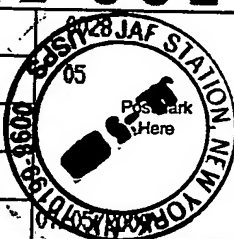
U.S. Postal Service<sup>TM</sup>  
**CERTIFIED MAIL<sup>TM</sup> RECEIPT**  
(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at [www.usps.com](http://www.usps.com)

ALEXANDRIA VA 22313

**OFFICIAL USE**

Postage	\$	\$0.61
Certified Fee		\$2.80
Return Receipt Fee (Endorsement Required)		\$0.00
Restricted Delivery Fee (Endorsement Required)		\$0.00
Total Postage & Fees	\$	\$3.41



Sent To: Commissioner for Patents  
Street, Apt. No.,  
or PO Box No. PO Box 1450  
City, State, ZIP+4<sup>®</sup> Alexandria, Virginia 22313-1450

PS Form 3800, August 2006

See Reverse for Instructions

Exhibit 3

# Honorable Discharge



from the Armed Forces of the United States of America

*This is to certify that*

GEORGE C. COX, [REDACTED], SENIOR AIRMAN, REGULAR AIR FORCE

*was Honorably Discharged from the*

## United States Air Force

*on the* 16TH *day of* JULY 1982 *This certificate is awarded*

*as a testimonial of Honest and Faithful Service*

*Charles H. Wilson*  
CHARLES H. WILSON, Lt Col, USAF  
Wright-Patterson Air Force Base, Ohio

☒ I learned Address undersignature here.



## Re: George Cox seeks a SCORE Meeting

From: Roland Plottel

Sent: Fri 5/6/11 6:44 PM

To: gc cox ( [REDACTED] )

Cc: plottel ( [REDACTED] )

This message is too wide to fit your screen. [Show full message](#)

Dear Mr. Cox

Tuesday, May 17, is good. Does 11AM work for you?

Roland Plottel

Score Counselor

plottel@scorenyc.org

---

From: gc cox ( [REDACTED] ) <[REDACTED]@hotmail.com>

To: [REDACTED] <[REDACTED]@scorenyc.org>

Sent: Mon, May 2, 2011 09:01:32 AM

Subject: George Cox seeks a SCORE meeting

Mr. Roland plottel: May 2, 2011

Can we schedule a meeting or do you prefer walk-in?

I will be at 26 Fed Plz on Tuesday 17May11. Are you available?

Topic: Abandonment vs Amendment & Response to Final OA + Joint-Venture Contracts.

My invention in the public domain is here <http://www.freepatentsonline.com/y2005/0165667.html>

Q. What constitutes patent abandonment?

### APPROXIMATE CHRONOLOGY

Application No. 10/765,544

TC/AU 3692

Examiner: Meinecke Diaz, Susanna M

01/27/2004 Filing date

04/08/2008 OA dated

04/05/2009 Response to the final OA .

I am still Non-Commercial status.

Q. How much \$ would i owe the PTO?

I have been searching for a low fee or no fee lawyer since my filing.

Thank you for your valuable time and input. I remain,

*Cordially,*

*George Cox*

*mobile - 336.988.3544*

*212.454.7752*

Exhibit 5